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LEGISLATIVE DRAFTING

Legislative drafting is a skill that is primarily acquired through experience. There is no one correct way in which to draft legislation, but there is usually a preferred style and form in each legislative setting that should guide drafters in their work. The style that is preferred in South Dakota is explained and illustrated in this manual.

The purpose of this manual is not to attempt to explain everything there is to know about South Dakota drafting style; rather, it attempts to present the information necessary to produce a usable and understandable bill draft. This is important because Joint Rule 6A-5 of the rules of the South Dakota Legislature requires that all legislation be reviewed for style and form by the Legislative Research Council before introduction.

The cardinal principle of legislative drafting is to write to minimize the possibility of misunderstanding. Complex, legalistic language or the "boilerplate" often found in old statutes is undesirable because it is not easily understood by people who are not lawyers. The simplest way to accurately state a proposition is usually the best.

There has been no attempt made here to describe legislative procedure. There is also no attempt to explain the drafting of some of the more unusual and complicated legislative forms. Those who have need of such drafting should contact the Legislative Research Council for assistance.

Finally, do not permit unfamiliarity or inexperience to prevent you from making an attempt to draft legislation. Experience is the only effective instruction.

GLOSSARY

ACT. An Act is a bill that has been approved by both houses of the Legislature in identical form and signed by the Governor, or, if vetoed, passed over the Governor's veto.

AMENDMENT. An amendment is an alteration proposed to a bill or resolution adding to, substituting for, or deleting material.

ANNOTATION. The official annotations are the compilation of the history of the statutes, interpretative notes, court decisions, and attorney general's opinions. They are published following each section of the *South Dakota Codified Laws*.

APPROPRIATION. An appropriation is an amount of money set apart by legislative act to be expended for a specific purpose within a specific time period.

BILL. A bill is a proposed law that has been introduced in the Legislature for consideration.

BODY OF A BILL. The body of a bill is the main text of the bill. Everything following the enacting clause is part of the body of the bill.

CALENDAR. The daily calendars, printed for each house, list the numbers and titles of bills and resolutions to be considered under the several orders of business, for each legislative day.

CATCHLINE. The catchline is the boldface material between the section number and the section material in the *South Dakota Codified Laws*. The catchline is a summarization, prepared by the publisher and Code Counsel, of the material in the section, but it is not a part of the statute and should not be included in any bill draft.

CODE. The *South Dakota Codified Laws* which was formerly referred to as the *South Dakota Compiled Laws*.

COMMEMORATION. An expression of the Legislature recognizing service or achievements of national or statewide importance or sorrow over a death or loss. Commemorations are done in the form of a resolution and are entered in the journals, but not voted upon.

COMMITTEE REPORT. A committee report documents the action of a committee or conference committee on a particular bill.

CONCURRENT RESOLUTION. A concurrent resolution is a form of legislation expressing an opinion of the Legislature. It does not have the force of law but may stimulate some other governmental agency or the public to take some appropriate action.

CONSTITUTION. The Constitution is the fundamental law of the state. Amendments to the Constitution must be approved by a vote of the people. No Act may legally be in violation of the provisions of the Constitution.

DRAFT. A draft is any piece of written legislation, at whatever stage of preparation, that has not yet been introduced as a bill or offered as an amendment.

ENGROSS. Engross means to incorporate the amendments and corrections into the text of the bill after a committee or either house has adopted it.

ENROLL. Enroll means to prepare a bill as an Act to be presented to the Governor after it has passed both houses.

HOGHOUSE. A hoghouse is a bill in which everything after the enacting clause has been deleted and new material substituted. This term is unique to the South Dakota legislative process.

HOUSE. When used generally, house refers to either the Senate or the House of Representatives. The term, the House, refers to the House of Representatives.

INTERNAL REFERENCE. An internal reference is a citation within the body of a bill to another section of the bill or an existing statutory provision.

INTERSTATE COMPACT. An interstate compact is legislation enacted in identical or very similar form by two or more states. Only changes which affect the internal operation of the compact within the state should be made in drafting an interstate compact, even though its style and form may vary from normal South Dakota usage.

JOINT RESOLUTION. A joint resolution is used primarily to propose amendments to the South Dakota Constitution and to ratify amendments to the United States Constitution.

JOURNALS. The daily journals contain the official record of all transactions under the several orders of business for each day of the session.

LAWMAKER.□ The South Dakota Legislature's legislative information system, which is available on the Internet. This integrated system performs all the functions associated with bill drafting, tracking of legislative documents, and chamber automation; i.e., bill drafting, committee report preparation, committee minutes preparation, committee agenda preparation, amendment preparation, journal and calendar preparation, and bill status.

LEADLINE. A leadline introduces a section in a bill which amends or repeals existing law or which contains new material that should be placed within a particular portion of the code.

RED BOOK. The Red Book is the common name for the official directory and rules of the Legislature. It contains the legislative rules and information about the legislative members. The information in the Red Book is also available on the Internet.

RESOLUTION OF DISAPPROVAL. A resolution of disapproval is used to suspend the operation of certain executive orders dealing with governmental reorganization.

SESSION LAWS. The session laws are a compilation of each separate Act of the Legislature for a given session and include private, local, and special laws or appropriations which are not printed in the Code because of their temporary nature. These volumes also contain the text of each proposed amendment to the Constitution.

SIMPLE RESOLUTION. A simple resolution is a form of legislation initiated and passed in one house only and ordinarily expresses condolences, memorials, or the opinion of the single house.

SINE DIE. Sine die is a Latin phrase that means adjournment without appointing a day on which to assemble again. It normally refers to the final adjournment of a particular Legislative Session.

SMOKEOUT. A smokeout is a floor motion that provides for delivery of a bill from committee to the floor of the body upon a vote of one-third of the members-elect.

SOUTH DAKOTA CODIFIED LAWS. The *South Dakota Codified Laws*, which is often abbreviated SDCL, is the current codification of South Dakota statutes of a general nature. It does not include local, appropriative, or special laws. SDCL is divided by subject matter into titles that are further divided into chapters and sections.

TITLE. Title may mean either a group of related chapters in the code or the title of a bill or resolution.

UNIFORM ACT. Certain suggested legislation is published by the National Conference of Commissioners on Uniform State Laws in its annual handbook and by the Council of State Governments annually in a volume called *Suggested State Legislation*. The drafting of a uniform act may require a great deal of additional work on the part of the drafter to remove contradictory existing provisions that may already exist in state law, as well as style and format changes.

THE COMPONENTS OF A BILL

A properly prepared bill consists of a title, an enacting clause, and a body of provisions. The correct form of the title and the enacting clause is specified in the Constitution and further defined by statute and custom, but the form and length of the body depends almost entirely upon the purpose to be accomplished and the context of existing statute. Other important parts of a bill are the bill number and sponsorship.

BILL NUMBERS

The bill clerk in the Senate or House assigns the official sequential number at the time when the bill is actually introduced. In the case of pre-filing, the Director of the Legislative Research Council assigns the bill number.

Senate Bills begin with 1; House Bills begin with 1001. For that reason, the bill number also indicates the house of origin. It is nevertheless correct to refer to a bill by its complete number: for example, Senate Bill 39 rather than Bill 39.

SPONSORS

No draft may be introduced as a bill without at least one individual legislative sponsor or the sponsorship of a legislative committee. For that reason the names of one or more sponsors will appear on each bill. The sponsorship is placed on the first page of the bill immediately before the title.

Sponsors are listed in alphabetical order except that the prime sponsor in each house is placed first. There can be only one prime sponsor in each house. The names of all of the members of the house of origin are listed before the names of any sponsor in the other house.

Example of preferred usage:

Introduced by: Senators Smith, Peter Anderson, Brown, Johnson, Jones, and White and
Representatives Green and Adams

This example indicates that Smith is the prime sponsor in the house of origin and Green the prime sponsor in the second chamber. It also indicates the membership in the legislative body of a second Anderson whose name is spelled the same or similarly.

If a member wishes to indicate that the introduction of a particular bill is at the behest of a constituent or other private person, the legislator may affix the term, by request, to the end of the introduction line. However, this is not frequently done.

Introduced by: Senator Gerhardt by request

Any bill introduced at the request of a department, board, commission, or other state agency must be prefiled as a committee bill and must indicate the name of the state agency at whose request the bill is being introduced.

Introduced by: The Committee on Health and Human Services at the request of the Department of Health

Introduced by: The Committee on Commerce at the request of the Electrical Commission

If requested by the Governor or the Chief Justice of the Supreme Court, a bill may also be introduced by a standing committee (SDCL 2-7-6.1).

Introduced by: The Committee on State Affairs at the request of the Governor

Introduced by: The Committee on Judiciary at the request of the Chief Justice

Once a bill is introduced, the sponsorship is final. No name may be added to or deleted from the sponsorship by amendment, even if the bill is amended in such a way that the sponsors no longer support the bill.

TITLE

The title, the requirements for which are prescribed by the Constitution, is that portion of the bill that expresses the subject of the bill. A properly prepared title is essential to the validity of the law to be enacted. The title should briefly summarize in a general statement the subject of the proposed legislation so that the reading of it will be sufficient to indicate the general nature of the changes, which are embodied in the bill or Act.

It is not desirable to enumerate all the details and provisions of a bill in the title. If the title attempts to be a complete and detailed index of the contents of the bill, any addition to or deletion from the body of the bill will necessitate a corresponding change in the title which is unnecessary if the title is sufficiently broad to indicate the general purpose of the bill.

When constructing a bill title, two purposes should be foremost. First, the title should be written so that the reader can understand what the enactment of the bill will accomplish without reading the body of the bill. Secondly, the title should be written so that minor amendments will not necessitate a title amendment. Direct citations to existing laws should not be made in the title.

The keystone of the title is the selection of active verb forms, which will express the purpose of the bill. Some of the most useful of these are:

add	delete	limit	rename
appropriate	direct	modify	require
authorize	establish	permit	retain
create	exempt	prohibit	revise
declare	extend	provide	subject
define	increase	remove	transfer

If a bill carries an appropriation or if the bill is intended to be effective immediately upon final approval, or a substantial penalty provision, then use the following phrases:

- and to make an appropriation therefor
- and to declare an emergency
- and to provide a penalty therefor

The first two phrases alert the presiding officers of the necessity for a two-thirds vote on final passage. However, omission of a reference to the emergency clause in the title will not ordinarily affect the legality of the Act nor render the emergency clause ineffective.

ENACTING CLAUSE

The provisions of the Constitution for the wording of the enacting clause for each bill introduced in the South Dakota Legislature is mandatory. No other wording will suffice -- the enacting clause must read exactly as provided in the Constitution (Article III, section 18). The enacting clause, immediately below the title, must always read:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

However, in the instance of popular legislation (initiated measures), the enacting clause must be:

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

This special form is required by Article III, section 1, of the Constitution. Any legislative amendment to delete the enacting clause has the effect of killing the bill.

BODY OF THE BILL

The body of the bill sets forth the material intended to be enacted. The purposes may be one or any combination of the following:

- enactment of new substantive law
- amendment of existing law
- appropriation of funds
- adoption of new material to a specific chapter
- repeal of existing law

Less frequently the purpose of a bill may be:

- adoption, amendment, or repeal of an administrative rule
- validation or ratification of some governmental action
- impeachment

A bill may contain any number of sections and provisions, so long as each section relates to the single subject expressed in the title. There is no limit to the number of details allowed in a bill or to its length. Each provision, however, must be germane to the subject of the bill. If any question arises as to whether a bill embraces two different subjects, it is better to draft separate bills than to include provisions of questionable relationship under a single title.

The body of the bill should be divided into sections of convenient length. Short sections facilitate reference to particular provisions. Generally, each distinct proposition should be in a separate section, which, in turn, may be divided into subdivisions if necessary. The sections in the body of the bill should be identified as follows: Section 1, Section 2, etc.

The material in the *South Dakota Codified Laws* generally called the catchline or bold face note, which is designed to summarize the statutory material, is not a part of the law and should **not** be typed into the bill. Moreover, the drafter should not assign statutory section numbers and subdivision designations to new substantive legislation. Assignment of statutory section numbers is a function of the South Dakota Code Counsel.

The several divisions of the body of a bill, somewhat in the order in which they ordinarily appear, are discussed below. With the exception of the main provisions, which carry out the purpose expressed in the title, none of the parts, or the arrangement, is necessarily mandatory. This presentation of model sections is not intended to be inclusive.

DECLARATION OF PURPOSE

A declaration of purpose is strongly discouraged and is rarely useful.

However, if a statement of policy or purpose is to be included, it is ordinarily the first section of the bill and should be short and concise. An improperly worded statement of purpose may cause serious problems of judicial interpretation. If such a statement is used, it might appear in the following form:

Section 1. In enacting legislation to provide loans and scholarships for the study of medicine, it is the intention of the South Dakota Legislature to alleviate the shortage of physicians.

LEGISLATIVE FINDINGS

The Legislature cannot alter past events or scientific facts by passing a law. However, if construction of a statute depends on a factual situation, the Legislature may wish to present its understanding of the situation in a "finding of fact" section. If such a statement is needed, it might appear in the following form:

Section 1. The Legislature finds that the Lakota, Nakota, and Dakota dialects of the Sioux Language are historically unwritten languages and are defined as such by the provisions of Public Law 94-73 as of January 1, 2000.

DEFINITIONS

Definitions of Convenience

It is frequently desirable to define words in a bill to assure complete clarity and precision of meaning. Definitions are also useful to avoid repetition. If a word has a clear, definite meaning, a definition is unnecessary and might even cause confusion. Beyond this, the statutes provide that each word should ordinarily be construed according to the common and approved usage of language. Finally, many words are already defined by statute (SDCL 2-14-2) and apply to each law unless the context plainly requires otherwise or the Legislature has otherwise established a special definition. Words and terms defined under SDCL 2-14-2 include:

according to usage	good faith	signature or subscription
adult	Indian tribe	State
children	month	testify
compound interest	municipality	third persons
corporate surety	oath	township boards
creditor	person	usual and customary
day	personal property	valuable consideration
debtor	population	verdict
decree	property	voter
depose	real property	will
folio	seal	writing, written
full-time equivalent or FTE	several	year

If definitions of convenience are appropriate, the definition section should follow substantially the following form:

Section 1. Terms used in this Act mean:

- (1) "Department," the Department of Agriculture;
- (2) "Insects," all arthropods, mollusks, and annelid worms except those which produce disease in man;
- (3) "Secretary," the secretary of the Department of Agriculture.

In the example given above, it is obvious that the term, insects, is not given its correct scientific definition. This illustrates precisely the utility of a proper definition of convenience. Here a specific grouping of diverse biological forms is somewhat arbitrarily, but quite expediently, made reference to by means of a single specially defined word.

Definitions of Substance

If there is a definition section, it is usually the first section of the bill. However, if a definition constitutes substantive law, it should not be placed in a definition section. The following example illustrates this point.

Section 4. That chapter 13-37 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this chapter, an exceptional child is any person under the age of twenty-one years who is a resident of South Dakota and who because of any physical or mental condition is not adequately provided for through the usual facilities of a public school.

This is not a mere definition of convenience but a substantive legal formulation upon which rights and responsibilities depend. One of the most common drafting errors is to treat definitions of substance as definitions of convenience.

PENALTIES

A bill requiring or prohibiting certain actions ordinarily provides penalties for violations. The bill should classify the violation as one of the existing classes of felonies or misdemeanors, or as a petty offense. This eliminates the need to specify the punishment and provides consistency within the code. The current classifications of penalties are as follows:

See SDCL 22-6-1.

- (1) Class A felony: death or life imprisonment in the state penitentiary. A lesser sentence than death or life imprisonment may not be given for a Class A felony;
- (2) Class B felony: life imprisonment in the state penitentiary. A lesser sentence may not be given for a Class B felony;
- (3) Class 1 felony: life imprisonment in the state penitentiary. In addition, a fine of twenty-five thousand dollars may be imposed;
- (4) Class 2 felony: twenty-five years imprisonment in the state penitentiary. In addition, a fine of twenty-five thousand dollars may be imposed;

- (5) Class 3 felony: fifteen years imprisonment in the state penitentiary. In addition, a fine of fifteen thousand dollars may be imposed;
- (6) Class 4 felony: ten years imprisonment in the state penitentiary. In addition, a fine of ten thousand dollars may be imposed;
- (7) Class 5 felony: five years imprisonment in the state penitentiary. In addition, a fine of five thousand dollars may be imposed;
- (8) Class 6 felony: two years imprisonment in the state penitentiary or a fine of two thousand dollars, or both.

See SDCL 22-6-2.

- (1) Class 1 misdemeanor: one year imprisonment in a county jail or one thousand dollars fine, or both;
- (2) Class 2 misdemeanor: thirty days imprisonment in a county jail or two hundred dollars fine, or both.

See SDCL 23-1A-22.

Petty offense: a fine of twenty dollars.

The following guide may assist the drafter in determining an appropriate penalty for the violation of the law:

Felonies:

- Serious injury to persons or property.

Class 1 misdemeanors:

- Minor injury to property.

Class 2 misdemeanors:

- Failure to carry out a mandatory duty.
- Violations of an agency rule or regulation.
- Violations of health or safety laws.

Petty offenses:

- Nuisances that are annoying but which cause no serious injury.

A Class 2 misdemeanor will be the most appropriate penalty in most cases.

Always place the penalty in the section in which the required or prohibited action is described by adding a sentence such as:

"A violation of this section is a Class 2 misdemeanor."

SEVERABILITY CLAUSE

Although severability clauses are frequently encountered in the laws of other states, do not include a severability clause in any South Dakota bill. Severability is a long-established doctrine of the Supreme Court of the state of South Dakota, sometimes called "the doctrine of separability." The Court is required to uphold any part of a legislative measure that will stand on its own without the part that is unconstitutional. See State ex rel Mills v. Wilder (1950), 73 SD 330, 42 N.W. 2d 891, and Nelson et al v. City of Miller (1968), 83 S.D. 611, 163 N.W. 2d 533.

Occasionally uniform or model Acts contain a severability clause and for reasons of uniformity the severability clause may be retained.

On the other hand, it may be desirable to indicate that the parts of the bill are not intended to be severable. In such a case, a section should be inserted to reverse the presumption of severability:

Section 7. The provisions of this Act are essentially and inseparably connected and interdependent.

SHORT TITLES

The use of short titles for an Act, except for uniform state laws, is discouraged. Short titles are used primarily in states that do not have a single unified code of laws. The use of short titles in South Dakota is inconsistent with the practice of codification. An exception may be made for Uniform State Laws, because a short title for a uniform Act indicates to the courts that courts in other states may have already construed the provision.

EFFECTIVE DATE

Legislation ordinarily takes effect on July first, following the close of the regular session, unless the bill specifically sets out a later date or contains an emergency clause. An emergency clause, which gives effect to the bill immediately upon approval by the Governor, requires concurrence by two-thirds of the members of each house and must be a true emergency. To determine what the courts have considered a justifiable emergency, study the annotations following section 1 of Article III of the State Constitution. The emergency clause is used for the support of state government or the exercise of a police power. Bills relating to taxation, the raising of revenue, or appropriations should use the "support of state government" form -- see

section 10 in the examples below. Bills that are regulatory in nature should use the "preservation of public peace" form -- see section 20 in the examples below. The title of the bill should make reference to the fact that an emergency clause is in the bill. An emergency clause, when required, should be the last section of the bill, in one of the following forms:

For the Support of State Government

Section 10. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

For the Immediate Preservation of Public Peace, Health, or Safety

Section 20. Whereas, this Act is necessary for the immediate preservation of the public peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

It is not uncommon to wish to delay the implementation of an Act until some later date. This may be accomplished by means of a delayed implementation clause such as the following:

Section 30. This Act is effective on January 1, 2003.

It is also possible to provide that certain provisions of an Act are to take effect on varying dates:

Section 40. Sections 27 to 39, inclusive, of this Act are effective on January 1, 2003.

Note: In the preceding example, the other sections automatically take effect on July first of the year of passage unless otherwise determined in the bill.

It is also possible to require an Act or sections of an Act to be sunsetted or repealed on a certain date:

Section 35. The provisions of this Act are repealed on June 30, 2005.

RETROACTIVITY

On rare occasions there is need and justification for making a statute effective retroactively. From a legal standpoint, it is necessary to remember that only benefits may be constitutionally conferred retroactively. No duty or obligation may be imposed retroactively. The following clause is an example:

Section 11. Each benefit provided by this Act applies to the surviving beneficiaries of each member of the retirement system who has died since July 1, 1995.

COMPENSATION AND EXPENSES OF COMMISSION MEMBERS

Pursuant to SDCL 4-7-10.4, the General Appropriations Act for each odd-numbered fiscal year contains a schedule setting allowable per diem and expenses for appointed members of each board, commission, council, and advisory body. It is, therefore, contrary to the expressed policy of the Legislature to attempt to set per diem and expense allowances of existing boards or commissions in legislation other than the General Appropriations Act. For newly created boards and commissions, the appropriations committee can temporarily set the rates during its interim meetings between sessions.

CODE COMMISSION AUTHORIZATION CLAUSE

If a bill requires changes in many sections of the code, it may be expedient to authorize the Code Commission to implement the change. For example, in order to change the name of the office of "state's attorney" to "counsel for the county," make an amendment in the code section in which the office is statutorily created and, at an appropriate place in the bill, include a section to this effect:

Section 13. The term, state's attorney, wherever it is used in this code means counsel for the county. The code commission in future supplements and revisions of the South Dakota Codified Laws shall substitute the term, counsel for the county, and its derivatives for the term, state's attorney, and its derivatives.

Do not directly delegate authority to change the code to the Code Commission. First create the change by statute; then delegate the authority to implement that change to the Code Commission.

APPROPRIATIONS

Any money not appropriated by the General Appropriations Act must be appropriated in special appropriations bills.

The determination of whether a governmental agency or function should be financed through the general appropriations bill, or by the bill creating the agency or function, is not an arbitrary determination to be made by the drafter. The Constitution provides that only the regular, ongoing expenses of state government are to be funded through the general appropriations bill. However, if provision for funds is made in the bill, the method of financing should be stated as a separate section. The appropriation section should state the officer or agency to which the appropriation is made, its amount, the period for which it is to be used, and the source. However, the exact amount of the appropriation should not be stated in the bill's title. In the case of some boards and commissions, it may be desirable to clearly state the officer who is to approve payments from the appropriation.

The elements of most appropriations bills are basically very similar. As a result many appropriation drafts can almost be described as filling in a blank form. A blank appropriation bill form is provided at the back of this manual. Moreover, the style and form of special appropriations bills has remained rather antiquated. Therefore, when drafting appropriations bills, pay special attention to the examples provided at the back of this manual.

Avoid using terms such as, authorized to expend, when the term, appropriate, may be used.

RESOLUTIONS

Resolutions, in their several forms, are expressions of the opinion, sentiment, or will of the Legislature. There are four types of resolutions: joint, concurrent, simple, and resolutions of disapproval. The joint rules also provide for a special type of less formal resolution called commemorations. Each type of resolution has unique qualities.

JOINT RESOLUTIONS

A joint resolution is used for consideration of certain special types of legislation. It is used for proposing amendments to the State Constitution. It is also customary to use a joint resolution to ratify or propose amendments to the United States Constitution and to place measures on the ballot.

CONCURRENT RESOLUTIONS

A concurrent resolution expresses the opinions of the Legislature, but it does not have the force of a statute. It may be used to request interim studies, memorialize or instruct a department of state government, or petition federal officials or agencies.

SIMPLE RESOLUTIONS

A simple resolution is intended to be acted upon by one house only, and it requires action only by the legislative chamber concerned. It is used to express an opinion or principle of one house, express an opinion or request to the other house, or regulate its own procedures or conduct. In some cases, especially when time is of the essence, a simple resolution is introduced in identical form in each house, in which case the two simple resolutions have virtually the same effect as a concurrent resolution.

RESOLUTIONS OF DISAPPROVAL

A resolution of disapproval is similar to a joint resolution. It permits the Legislature to disapprove of any executive order reorganizing state government that was issued during the preceding year.

COMMEMORATIONS

A commemoration expresses legislative recognition and is not voted on. Instead, if any member makes a timely objection to a commemoration, the commemoration fails. Therefore, commemorations should deal only with the most uncontroversial of subjects, such as congratulations or condolences, expression of gratitude, and recognition of a special event or celebration.

DRAFTING RESOLUTIONS

Most concurrent or simple resolutions consist of a title, a preamble, and a body.

The title states the type and subject of the resolution. It should be clear and concise giving an accurate description of the resolution's contents.

The preamble is a series of "*Whereas*" clauses which describe the situation or conditions for which the resolution proposes action. Language in a preamble may be more literary or rhetorical than would be appropriate in other forms of legislation. A joint resolution does not ordinarily contain a preamble. The preamble of a commemoration should not contain more than three short "*Whereas*" clauses since commemorations are usually enrolled as one-page documents suitable for framing.

The body of a resolution is actually the closing, or resolving clauses, which prepare action or express the opinion of the Legislature.

STYLE

ABBREVIATIONS

Abbreviations should not be used in drafting a bill. In particular, the word "title" or "chapter" or the symbol "□" should be used in the body of the bill rather than SDCL.

AMENDING EXISTING STATUTES

When amending existing statutes, the parts that are to be omitted must be shown as overstricken and any new material shown underscored. **New material always follows the stricken material for which it is being substituted. Do not reverse the order.** If the material to be stricken consists of more than one sentence, the new or underscored material replacing the old or stricken material should be inserted at the end of the sequence of stricken material. Periods should logically be carried to the end of the sentence where new material is being inserted and treatment should be the same as in simple amendments where new material is inserted after a specified word and before the period.

Never overstrike or underscore part of a word, number, or citation:

- not ~~animals~~, but ~~animal~~ animals
- not □ ~~32-14-79~~ 87, but □ ~~32-14-79~~ 32-14-87
- not ~~forty-five~~, but ~~forty five~~ forty

When amending or repealing, use an appropriate leadline:

"That □ 2-23-71 be amended to read as follows:"

"That □ 2-23-71 be repealed."

"That chapter 2-23 be amended by adding thereto a NEW SECTION to read as follows:"

Sections that are to be repealed should ordinarily be printed with the entire wording overstricken.

Sections that are entirely new material should not be underscored. The leadline or lack of a leadline will, by itself, indicate that the material is new.

Ordinarily, sections of a bill amending or repealing code sections should appear in numerical order. If, however, the bill is easier to understand or follow, the order in which the sections appear in the bill may be altered. If the proposed bill is a major revision or cleanup, the sections to be repealed may be collected and repealed in a concluding bill section.

CAPITALIZATION

For many years it was the policy of the Legislature to use capitalization as sparingly as possible, in accordance with the pattern used in the *South Dakota Codified Laws*. This policy has been modified to encourage normal capitalization usage; the guidelines of the *Chicago Manual of Style*, thirteenth edition, may be used as a general model.

Capitalize proper names in the text of a bill.

Capitalize officially titled state or federal acts. For example, Securities and Exchange Act of 1934; South Dakota Human Relations Act of 1972. Before capitalizing the name of a particular state Act, check the *South Dakota Codified Laws* to be sure it does have a specific name; for example, see SDCL 20-13-56. On the other hand, a reference to laws on a particular subject, such as "insurance statutes," is not capitalized.

The full proper name of a department or a governmental agency or institution is capitalized:

Department of Labor	Human Services Center
University of South Dakota	Division of Insurance
Hughes County Commission	Supreme Court
Environmental Protection Agency	Legislature
Board of Pharmacy	Governor

But not:

department	agency
university	board
county commission	division

The titles of smaller offices or programs within departments are **not** capitalized.

The titles of state, county, municipal, or district officials are **not** capitalized:

secretary of state	mayor
secretary of agriculture	supervisor
county commissioner	

The full title of funds are **not** capitalized:

motor vehicle fund
Unified Judicial System court automation fund
water and environment fund

Substitutions for official titles, such as "secretary" or "director," are **not** capitalized.

The words "title," "article," "chapter," "section," or "rule" are **not** ordinarily capitalized.

CATCHLINES

Never attempt to amend or print in a bill the catchline of a code section as it appears in the *South Dakota Codified Laws*. The catchline is not part of the statute. The publisher and Code Counsel will alter this catchline if necessary.

CONSISTENCY

Consistency, rather than variety, in language, organization, and arrangement is a prime rule in good bill drafting. The same word or phrase should be used to denote the same thing throughout a bill. New language should utilize the same terms used in the statutes to which it is added. Terms that are defined in a bill should be repeated exactly and without variation in each portion of a bill following the definition. Sections similar in substance should be similarly arranged and outlined. By following the rule of consistency, the drafter eliminates to a great extent the danger of misinterpretation and disagreement over the contents of the bill. The use of synonyms, merely for the sake of variety, leads to the possibility of divergent constructions of the language or at least uncertainty as to why the synonym was used.

EXAMPLES

Well-drafted legislation should be understandable without the use of examples. Especially objectionable is the use of phrases like "**including . . .**" or "**including, but not limited to . . .**." Such partial listings always raise more questions than they resolve about why certain items are included or omitted from such lists.

GENDER

If the proposed law is intended to apply to persons of both sexes, it is best to use gender-neutral terms, such as "applicant," "licensee," or "person" in bill drafting. Avoid the use of pronouns altogether, by substituting their antecedents, so the phrase "He shall file . . ." might read "The licensee shall file . . ." Often a sentence may be rewritten to avoid a construction requiring a pronoun.

Never use the phrases "he or she" or "him or her" as in "he or she shall file . . ." Do not use "they" or "their" as a singular subject. These are awkward and unnecessary. If the antecedent can, for biological reasons, only be masculine or feminine, the masculine or feminine pronoun may be used.

HYPHENATION

Frequently used words that should be hyphenated include:

one-half
three-tenths

non-ad valorem

Do not hyphenate:

ex parte
interstate
intrastate
nonresident
percent

prima facie
pro rata
prorate
statewide
vice president

IMPERATIVE AND PERMISSIVE CONSTRUCTION

The verbs used in legislation should be active and in the present tense. Verbs are generally imperative, permissive, or prohibitive. This is a guide to usage:

shall	=	required action
may	=	permitted action
may only	=	restricted permitted action
may not	=	prohibited action
must	=	action required as a condition of something; used with inanimate subjects
must be	=	required condition
is	=	statement of condition

Legislation giving discretion to an officer or board through the use of "may" must also establish guidelines to be followed in exercising that discretion. A negative used with "may" negates the obligation and permission to act and is the stronger prohibition. A negative used with "shall" negates the obligation, but not the permission, to act and therefore should be avoided.

Correct	The term, commission, means the water commission.
Incorrect	The term, commission, shall mean the water commission.
Correct	The capital of the state is Pierre.
Incorrect	The capital of the state shall be Pierre.

Do not use the word "shall" to confer a right because, in that case, the use of "shall" implies a duty to enjoy the right.

Correct	The secretary's annual salary is twenty-one thousand dollars.
Incorrect	The secretary's annual salary shall be twenty-one thousand dollars.

Do not use a negative subject with an affirmative "shall."

Correct	No person may
Incorrect	No person shall

NUMBERING OF STATUTORY MATERIAL

The basic working unit of the *South Dakota Codified Laws* is the section. A group of related sections form a chapter; and a group of related chapters form a title. Ordinarily, sections are not broken down into smaller units. When this does occur the resulting unit is called a subdivision. In the rare event that a subdivision is divided, the resulting unit is called a subsection.

A sample citation for a subsection might be § 77-3-31(2)(b).

- 77 is the title
- 3 is the chapter
- 31 is the section
- (2) is the subdivision
- (b) is the subsection

Graphically this arrangement could be represented as follows:

77-3-31. Introductory material: (1) Subdivision; (2) Subdivision; (a) Subsection; (b) Subsection; (c) Subsection; (3) Subdivision.
--

Subdivisions are generally overused. Unless subdivisions significantly contribute to the clarity of the statute, try to avoid the use of subdivisions.

The federal drafting style, which is also used in a number of states, assigns a subdivision designation to each paragraph of any multiparagraph section. This practice is not permitted in South Dakota. In general, avoid multiparagraph sections by making each paragraph a separate section using internal references if necessary.

NUMBERS

Most numbers used in the body of proposed legislation, including sums of money, should be written rather than indicated by numerals:

- . . . within ten days . . .
- . . . fined not less than twenty-five dollars . . .
- . . . is fixed at one thousand two hundred dollars . . .

Common exceptions to this rule might be dates, formulas, and numerals used in tables. Moreover, in special appropriations it is correct to use both the written and the numerical form in tandem:

- . . . appropriates seven thousand thirty-one dollars and twelve cents (\$7,031.12) . . .

PUNCTUATION

The use of punctuation in bill drafting is not different from correct formal usage. Some rules to be observed in the use of punctuation include:

- Do not use a colon except to introduce a series of subdivisions;
- In a series of subdivisions following a colon, use a semicolon at the end of each provision;
- The comma or period is placed inside a quotation mark but other punctuation marks are placed outside unless part of the quotation;
- In the preamble to a concurrent or simple resolution or in the preamble to a commemoration use a comma after the word "Whereas," and use a semicolon at the end of each clause.

The utilization of short, simple sentences avoids the need for excessive punctuation and prevents possible misinterpretation. Extensive punctuation often indicates faulty arrangement or ambiguous grammatical construction.

REFERENCES TO EXISTING LAW

References to existing law will usually be to the *South Dakota Codified Laws*. Within the body of the bill, the abbreviation SDCL is not used. The section symbol (§) or the words "chapter" or "title" should be used as appropriate.

Although Session Laws are not frequently amended, Session Laws may be cited as "chapter 176 of the 1999 Session Laws."

Laws passed earlier in the current session are cited as "Senate Bill 61, as previously enacted by the Seventy-third Session of the South Dakota Legislature."

The Constitution should be cited as "S.D. Const., Art. XVIII, § 8."

Internal references to other sections of the same bill may be cited as "pursuant to section 4 of this Act."

SINGULAR SUBJECT

Use the singular instead of the plural.

Correct	A defendant in a criminal action is presumed innocent until the contrary is proved.
Incorrect	Defendants in criminal actions are presumed innocent until the contrary is proved.

Section 2-14-6 provides that words used in the singular number include the plural.

TIME

Use the present tense. The law is conceived of as being in the continuous present and each law is designed to give a rule for the continuing present. The present tense is also the most natural and simplest form of expression.

Correct	A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether guilt is satisfactorily shown, the defendant is entitled to an acquittal.
Incorrect	A defendant in a criminal action shall be presumed to be innocent until the contrary shall be proved, and in case of a reasonable doubt whether guilt shall be satisfactorily shown, the defendant shall be entitled to an acquittal.

Section 2-14-7 provides that words used in the present tense include the future as well as the present.

VOICE

The active voice should be used. The use of the active voice automatically locates the principal actor -- the person or entity who has a power, privilege, or duty -- as the subject of a sentence, logically followed by the mandate imposed. Although the passive voice must be used where unidentified principals are involved, it may be employed when the use of the active voice would cause awkwardness of construction. The passive voice should usually be avoided.

Correct	The board shall appoint a director.
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<i>Incorrect</i>	A director shall be appointed by the board.
-------------------------	---

Impersonal constructions should also be avoided.

Correct	The board shall appoint a director.
----------------	-------------------------------------

<i>Incorrect</i>	It is the duty of the board to appoint a director.
-------------------------	--

WORD SELECTION

The wording of legislation should be precise, clear, and concise. Avoid both conversational and legalistic expressions. Use shorter, simpler words if there is a choice. The following words or phrases are often incorrectly used in drafting and can usually be replaced by a better word or phrase:

AVOID

absolutely null and void
aforesaid, aforementioned
before-mentioned
afforded or accorded
and/or
any and all
as provided in this Act

at such time as
at the time of
at the time of the person's death
attorney and counselor at law
authorize and empower
be and the same is hereby
bonds, notes, checks, drafts
other evidences of indebtedness
bring an action
carry out
constitute and appoint
deal with
deem
deemed to be
during such time as
during the course of
each and every
either directly or indirectly
employ (meaning to use)
enter into a contract with
every person, all persons
examine witnesses and hear testimony
except as otherwise provided
expend
fail, refuse, or neglect
feasible
following section
formulate
for the duration of

PREFERABLE

void
"the," "that," or "those"

given
"either A or B, or both,"
any
(use only if necessary to avoid
confusion)
when
when
when the person dies
attorney
authorize
is
evidence of indebtedness

sue
"execute" or "complete"
appoint
"address" or "conduct"
consider
is
while
during
each
(delete entirely)
use
contract with
any person
take testimony
(delete entirely)
spend
fail
practicable
"section 3 of this Act"
make
during

AVOID

for the reason that
forthwith
from and after
from July first
full and complete
give consideration to
give recognition to
have knowledge of
have need of
hereinafter, hereinbefore,
 hereinabove, above, below
 following, preceding

in case
in cases in which
in order to
in the event that
in the interests of
inquire
is able to
is applicable
is authorized to
is binding upon
is defined and shall be construed
 to mean
is dependent on
is directed to
is empowered to
is entitled to
is hereby authorized and it
 shall be his duty to
is required to
is unable to
it is a person's duty to
it is lawful to
law passed
make application
make a determination
make payment
make provision for
matter transmitted through the mail
maximum
means and includes
member of a partnership

PREFERABLE

because
immediately
after
after June thirtieth
full
consider
recognize
know
need
(these are objectionable when
referring to the position of a
section or other statutory provision;
if reference is necessary, specify
the chapter, paragraph, section or
subsection)

if
if
to
if
for
ask
can
applies
may
binds
means

depends on
shall
may
may
shall

shall
cannot
shall
may
law enacted
apply
"determine" or "decide"
pay
provide for
mail
most
means
partner

AVOID

modify
must (in most instances)
no later than June thirtieth
none whatever
not later than
null and void
occasion (as a verb)
of a technical nature
on or after July first
on a person's own application
ordered, adjudged, and decreed
or, in the alternative,
party

per annum
per centum
per day
per foot
period of time
prior to
prosecute its business
provided (conjunction)
provided, however

provision of law
purchase
render (meaning "to give")
render (meaning "to make")
retain
rules and regulations
said
same
shall be construed to mean
shall be deemed to be
shall have the power to
shall not
sole and exclusive
State of South Dakota
subsequent to
suffer
terminate
to wit
under the provisions of
unless and until
until such time as
utilize (meaning to use)

PREFERABLE

change
shall
before July first
none
before
void
cause
technical
after June thirtieth
upon request
ordered
or
person (unless referring to a party to
a suit)
a year
percent
a day
a foot
period
before
conduct its business
"if" or "but"
"except," "but," or "however"
or start a new sentence
statute
buy
give
make
keep
rules
"the," "that," or "those"
(appropriate noun or pronoun)
means
is
may
may not
exclusive
State
after
allow
end
(delete or use "namely")
pursuant to
"unless" or "until"
until
use

AVOID

whatsoever
when, where (as a condition)
whensoever
wheresoever
whosoever

PREFERABLE

whatever
(usually means "if" in legislation)
"when" or "if"
where
whoever

Avoid adjectives such as "real," "true," and "actual," and adverbs such as "duly," and "properly." Since these ideas are normally implied, expressing them creates doubt about whether they are implied elsewhere.

Do not use "adequate," "sufficient," "promptly," "approved," or "reasonable" unless you specify what these words mean or refer to the standards that must be met.

AMENDMENTS

Amendments are an essential part of the legislative process because amendments allow the alteration of bills and resolutions after introduction. The principles of style and form that apply to bills also apply to amendments.

In drafting amendments, imagine giving instructions to a secretary for alterations in a bill. Although some amendments may be pages long and make dozens of changes, the basics of each amendment never change; identify the following:

- the legislation to be amended
- the version of the legislation
- the place at which the change will occur
- the change itself

For example:

_____ moved that SB 247 be amended as follows:
On page 3, line 5 of the printed bill, delete "is hereby authorized" and insert "may".

Note: This is the correct way to amend new material within a bill which is not currently in statute. In this case, the use of overstrikes and underscores would be incorrect.

Amendments may be offered on the floor, in committee, or in conference committee. Bills, including bill titles, any form of resolution, and previous amendments may be amended. But no matter what the circumstances, the basic amendment form remains unchanged. The following examples illustrate the variety -- as well as the essential uniformity -- of amendments:

_____ moved that SB 307 be amended as follows:
On page 2, line 18 of the printed bill, remove the overstrikes from "~~commission shall~~" and delete "department may".

Note: This is in effect restoring a code provision to its original form.

_____ moved that SB 191 be amended as follows:
On page 3, line 20 of the printed bill, overstrike "five" and insert "ten".

Note: This is the correct way to amend an existing statute that appears within a bill. Since an existing statute is being amended, it is incorrect to delete "five" and insert "ten".

_____ moved that SB 189 be amended as follows:

On the printed bill, delete everything after the enacting clause and insert:

"Section 1. That § 67-7-31 be amended to read as follows:

67-7-31. The sunflower, ~~dandelion~~, wild plum blossom, salsify, yucca, and wild rose are designated honorary state flowers."

Note: This is what is commonly called a *hoghhouse* amendment. Also note how the amendment of existing statute is handled in amendments.

_____ moved that SB 34 be further amended to read as follows:

On page 1 of the Senate Transportation committee engrossed bill, delete lines 6 to 13, inclusive.

Note: This amends a bill that has been amended in committee. Always be careful to work from and identify in the amendment the most current version of the bill in question.

_____ moved that SB 271 be amended to read as follows:

On page 4 of the printed bill, between lines 14 and 15, insert:

"Section 8. The commission shall cooperate with the Department of Agriculture in performing the duties assigned pursuant to section 7 of this Act."

Note: The placement of this type of amendment within the body of the bill rather than at the end may be useful to keep the material in the bill in a logical sequence. However, it may require internal references to be amended.

The LawMaker[®] system automatically renumbers each section when the bill is engrossed. Therefore, when amending entire sections out of or into a bill, never draft amendments in a manner that provides for the renumbering of existing bill sections.

When drafting a bill, avoid the use of internal references. If there are numerous internal references in the bill, it is recommended that new sections be added to the end of the bill. If the new sections are not added to the end of the bill, special care must be taken in preparing amendments that will result in section number changes.

RULE-MAKING AUTHORITY

ADMINISTRATIVE AGENCIES

In most instances any legislation of substantial scope must be administered either by some agency, board, or commission. The provisions of the Administrative Procedures Act found in SDCL 1-26 should be used to avoid unnecessary repetition and to provide uniformity for the rule-making procedure of state agencies, for hearings, and for appeals to the courts.

If a special appropriations bill establishes a new program, authority to promulgate rules should be considered in the areas of eligibility for funds, audit requirements, or standards for distributing the funds. The important issues to be determined in this area concern how the funds are to be spent and whether additional conditions are to be imposed concerning the distribution of the funds.

AGENCY RULES

Authority to allow an agency to promulgate rules should be narrowly drawn. A statement such as "The department may promulgate rules to implement this chapter" is a grant of rule-making power without standards and is an unconstitutional delegation of legislative authority. Instead, determine what rules the agency needs and draft specific rule-making authority accordingly. For example:

Section 10. The secretary of the Department of Public Safety shall promulgate rules, pursuant to chapter 1-26, in the following areas:

- (1) Definitions;
- (2) Commercial driver license waivers;
- (3) Single license requirement;
- (4) Notification requirements and employer responsibilities;
- (5) Federal disqualifications and penalties;
- (6) Testing and licensing procedures;
- (7) Vehicle groups and endorsements;
- (8) Required knowledge and skills;
- (9) Tests;
- (10) Commercial driver license document; and
- (11) Other rules necessary to implement the provisions of C.F.R. 49, Chapter 3, Subchapter B, parts 383, 384, 390, 391, and 392, inclusive, January 1, 1990, as of January 1, 1996.

AMENDING EXISTING RULES

A bill designed to amend an agency's rule should preferably amend the agency's statutory authority to adopt rules to restrict or prohibit the agency from passing rules in the area of concern. SDCL 1-26-8.1 states that a rule is void if the authority to adopt it is repealed. When drafting legislation to remove statutory authority to adopt rules, be sure to check what the agency has cited as its "General Authority" and "Law Implemented." Many agencies have more than one statute authorizing the agency to adopt rules.

It is possible to draft a bill to repeal a specific agency rule, but this procedure is not encouraged. If an agency's rule is repealed by statute, the agency may legally adopt the rule again in defiance of the legislative enactment.

Although legal, it is poor form to draft a bill to amend the wording of a rule. This procedure has the effect of substituting a statute for an agency rule.

A DRAFTING EXERCISE

On the next four pages you will find two drafts of the same bill. The first draft, A, is an illustration of many of the errors found in the drafting style that was prevalent several years ago. The second draft, B, is an illustration of the same bill in the modern style.

If you are interested in acquiring some practical drafting experience, you may wish to redraft A, using the techniques explained in this manual, before comparing your work to draft B. If you cannot spare the time to do the whole exercise, you may still want to compare draft A to draft B and attempt to understand why the various changes were made. This should help to reinforce some of the more important drafting principles that you have been studying.

State of South Dakota

_____ SESSION
LEGISLATIVE ASSEMBLY, _____

Draft Exercise

000A0000

HOUSE BILL A

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to protect the public food supply by providing for
2 proper handling of distressed food, and declaring an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act, unless the context otherwise requires, mean:

- 5 (1) "Department," the Department of Health;
- 6 (2) "Secretary," the secretary of the Department of Health;
- 7 (3) "Committee," the public health advisory committee created by § 34-1-2;
- 8 (4) "Person," an individual, partnership, co-partnership, cooperative, firm,
9 company, public or private corporation, or any other legal entity, or their legal
10 representative, agent or assigns;
- 11 (5) "Salvage," the recovery, cleaning, sorting, sanitizing and otherwise preparing
12 distressed food for possible human use;
- 13 (6) "Salvage operator," includes any person who buys, sells, handles, transports or
14 otherwise deals in distressed food;
- 15 (7) "Distressed food," all food, food products, drugs, alcoholic or nonalcoholic
16 beverages, nonedible products expected to be used in or around the home,
17 medicines and related items that have been subject to possible contamination
18 from fire, flood, tornado, windstorms, train or vehicle accidents. This shall
19 include damage or contamination caused by shipping, handling or storage
20 errors or accidents; or product contamination caused by spillage of toxic
21 material, poisons, pesticides, petroleum products or their derivatives or other
22 deleterious substance that may be injurious to health.

1 Section 2. The committee is empowered to promulgate and the secretary is
2 empowered to enforce rules and regulations, under the provisions of chapter 1-26,
3 governing the control, movement, sorting, embargo, condemnation, and salvage of
4 distressed food.

5 Section 3. The secretary shall have the authority to investigate all known disasters
6 or situations that may have resulted in distressed food pursuant to this Act. This
7 authority shall include the right, at any reasonable time, to enter any facility or area, to
8 examine merchandise, records, and equipment.

9 Section 4. No persons shall remove, salvage, destroy, or convert for personal use
10 any distressed food at the site of a disaster without written consent of the secretary.

11 Section 5. This Act does not prevent any state or municipal official from moving
12 distressed food to a temporary holding area when such movement is necessary for
13 highway safety or protection and control of the distressed food.

14 Section 6. The secretary is hereby authorized to enter into mutual agreements with
15 secretaries of other state departments to provide better utilization of personnel in
16 administration of this Act and in any emergency where preassigned functions may have
17 been delineated.

18 Section 7. Any person violating any section of this Act shall upon conviction be
19 guilty of a misdemeanor.

20 Section 8. If a part of this Act is invalid, all valid parts that are severable from this
21 invalid part remain in effect. If a part of this Act is invalid in one or more of its
22 applications, the part remains in effect in all valid applications that are severable from
23 the invalid applications.

24 Section 9. This Act may be cited as the South Dakota Distressed Food Act.

25 Section 10. Whereas, this Act is necessary for the immediate preservation of the
26 public peace, health, or safety, an emergency is hereby declared to exist, and this Act
27 shall be in full force and effect from and after its passage and approval.

State of South Dakota

_____ SESSION
LEGISLATIVE ASSEMBLY, _____

Revised Draft Exercise

000B0000

HOUSE BILL B

Introduced by: _____

- 1 FOR AN ACT ENTITLED, An Act to provide for the salvage of distressed food.
- 2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
- 3 Section 1. Terms used in this Act mean:
- 4 (1) "Committee," the public health advisory committee created by § 34-1-2;
- 5 (2) "Department," the Department of Health;
- 6 (3) "Salvage," the recovery, cleaning, sorting, sanitizing, and otherwise preparing
- 7 distressed food for possible human use;
- 8 (4) "Salvage operator," any person who buys, sells, handles, transports, or
- 9 otherwise deals in distressed food;
- 10 (5) "Secretary," the secretary of the Department of Health.
- 11 Section 2. Distressed food is any food, food product, drug, alcoholic or
- 12 nonalcoholic beverage, nonedible product for consumer use around the home,
- 13 medicine, and related items that have been subject to possible contamination from fire,
- 14 flood, tornado, windstorms, train, or vehicle accidents. This includes damage or
- 15 contamination caused by shipping, handling, or storage errors or accidents; or product
- 16 contamination by spillage of toxic material, poisons, pesticides, petroleum products, or
- 17 other substance that may be injurious to health.

1 Section 3. The secretary may investigate any disaster or situation that is likely to
2 result in distressed food. The secretary may, at any reasonable time, enter any facility
3 or area, to examine merchandise, records, and equipment.

4 Section 4. No person may remove, salvage, destroy, or convert for personal use any
5 distressed food at the site of a disaster without written consent of the secretary. A
6 violation of this section is a Class 2 misdemeanor.

7 However, any state or municipal official may move distressed food to a temporary
8 holding area if the movement is necessary for highway safety or protection or control of
9 the distressed food.

10 Section 5. The committee may promulgate and the secretary may enforce rules,
11 pursuant to chapter 1-26, governing the control, movement, sorting, embargo,
12 condemnation, and salvage of distressed food.

13 Section 6. The secretary may enter into mutual agreements with the secretaries of
14 any other state department to provide better utilization of personnel in the
15 administration of this Act.

State of South Dakota

_____ SESSION
LEGISLATIVE ASSEMBLY, _____

Bill Containing New Material

000C0000

HOUSE BILL C

Introduced by: Representatives Jones, Peters, and Wilson

1 FOR AN ACT ENTITLED, An Act to provide for the withdrawal of a candidate for
2 elective municipal office.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 9-13 be amended by adding thereto a NEW SECTION to
5 read as follows:

6 Any person who has filed a nominating petition pursuant to § 9-13-7 may withdraw
7 from nomination by a written request, signed by that person and properly
8 acknowledged and filed with the auditor or clerk of the municipality. The name of a
9 withdrawn candidate may not be printed on the ballot if it is withdrawn at least twenty
10 days prior to the day of election.

NOTE: Although this is new material that will be placed within the code, it is **not underscored** since it does not amend an existing code section. The fact that it is new material can be easily ascertained from the lead line.

State of South Dakota

_____ SESSION
LEGISLATIVE ASSEMBLY, _____

Bill Amending Existing Statutes

000D0000

HOUSE BILL D

Introduced by: Representative Talcott

1 FOR AN ACT ENTITLED, An Act to lengthen the term of school board members.
2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
3 Section 1. That § 13-8-2 be amended to read as follows:
4 13-8-2. ~~There shall be a~~ Each school district board ~~consisting~~ shall consist of five,
5 seven, or nine members to be elected ~~in accordance with the provisions of~~ as provided
6 in § 13-8-6, whose terms shall be from one to ~~three~~ five years initially, and ~~three~~ five
7 years thereafter; ~~provided that each.~~ However, each school board member ~~shall be~~
8 ~~entitled to~~ may complete the term of office to which the member was elected.

NOTE: The drafter has taken the opportunity to improve the style of the statute on lines 4, 5, 6, 7, and 8 as well as make substantive changes on line 6.

State of South Dakota

_____ SESSION
LEGISLATIVE ASSEMBLY, _____

**Bill Enacting New Legislation
Without Specific Code Reference**

000E0000

HOUSE BILL E

Introduced by: Representatives Walker and Larson and Senators Murphy, Baker, and Small

1 FOR AN ACT ENTITLED, An Act to require certain storage tanks to be placed in
2 concrete structures.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. A tank or container, located above a shallow aquifer and used for the
5 storage of hydrocarbons, fertilizers, chemicals, or other substances, shall be encased in
6 a concrete structure above ground and constructed to keep the contents of the storage
7 tank from escaping into the aquifer. A violation of this section is a Class 2
8 misdemeanor.

State of South Dakota

_____ SESSION
LEGISLATIVE ASSEMBLY, _____

Bill Repealing Existing Statutes

000F0000

SENATE BILL F

Introduced by: Senators John Smith, Lawrence, and Wayne Smith and Representatives Felton and Endicott

1 FOR AN ACT ENTITLED, An Act to repeal certain statutes providing for township
2 constables.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 8-8-2 be repealed.

5 ~~8-8-2. Any constable in any organized civil township containing any~~
6 ~~unincorporated town shall be a proper officer for arresting and detaining persons for~~
7 ~~disorderly conduct within such town arising from drunkenness or otherwise, without~~
8 ~~process first issuing.~~

9 Section 2. That § 8-8-3 be repealed.

10 ~~8-8-3. Township constables shall be allowed the same fees as are allowed sheriffs~~
11 ~~for like services.~~

State of South Dakota

_____ SESSION
LEGISLATIVE ASSEMBLY, _____

Multiple Section Bill

000G0000

HOUSE BILL G

Introduced by:

1 FOR AN ACT ENTITLED, An Act to temporarily increase the excise tax on certain motor
2 fuels, to deposit the increased excise tax revenue in the local government highway and
3 bridge fund, to revise certain license fees for noncommercial vehicles, and to declare an
4 emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. That chapter 10-47B be amended by adding thereto a NEW SECTION to read as
7 follows:

8 In addition to the fuel excise tax rates imposed by § 10-47B-4, there are imposed additional
9 fuel excise tax rates as follows:

- 10 (1) Motor fuel (except aviation gasoline) - \$.01 per gallon;
- 11 (2) Special fuel (except jet fuel) - \$.01 per gallon;
- 12 (3) Liquid petroleum gas - \$.01 per gallon; and
- 13 (4) Compressed natural gas - \$.01 per gallon.

14 Section 2. That chapter 10-47B be amended by adding thereto a NEW SECTION to read as
15 follows:

16 Any funds collected pursuant to section 1 of this Act shall be deposited in the local
17 government highway and bridge fund created pursuant to § 32-11-34.

18 Section 3. That § 10-47B-6 be amended to read as follows:

19 10-47B-6. A fuel excise tax is imposed on all motor fuel or special fuel, except unblended

1 ethyl alcohol, imported into this state in the bulk cargo area of any motor vehicle, vessel rail
2 car, or trailer by any means other than through a terminal located in this state, upon its entry
3 into this state. The tax imposed shall be at the rate indicated in ¶ 10-47B-4 and section 1 of this
4 Act.

5 Section 4. That ¶ 32-5-6 be amended to read as follows:

6 32-5-6. License fees and compensation on a noncommercial motor vehicle which is an
7 automobile, pickup truck, or van as provided by ¶ 32-5-5, shall be determined by the
8 manufacturer's shipping weight, including accessories, as follows:

9 (1) Two thousand pounds or less, inclusive, ~~twenty~~ thirty dollars;

10 (2) From 2,001 to 4,000 pounds, inclusive, ~~thirty~~ forty-two dollars;

11 (3) From 4,001 to 6,000 pounds, inclusive, ~~forty~~ fifty-five dollars;

12 (4) ~~to (11) Repealed by SL 1992, ch 26, ¶ 7~~ Over 6,000 pounds, sixty-five dollars.

13 Section 5. That ¶ 32-5-9 be amended to read as follows:

14 32-5-9. License fees and compensation for use of the highways payable under ¶ 32-5-5
15 shall be: ~~seven~~ nine dollars and fifty cents for motorcycles with a piston displacement of less
16 than three hundred fifty cubic centimeters and ~~ten~~ twelve dollars for motorcycles with a piston
17 displacement of three hundred fifty cubic centimeters or more.

18 Section 6. The effective date of sections 1 to 3, inclusive, of this Act is April 1, 2009.

19 Section 7. The provisions of sections 1 to 3, inclusive, of this Act are repealed on June 30,
20 2012.

21 Section 8. The effective date of sections 4 and 5 of this Act is July 1, 2009.

22 Section 9. Whereas, this Act is necessary for the support of the state government and its
23 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
24 full force and effect from and after its passage and approval.

State of South Dakota

_____ SESSION
LEGISLATIVE ASSEMBLY, _____

Special Appropriations Bill

000H0000

SENATE BILL H

Introduced by: The Committee on Health and Human Services at the request of the
Governor

1 FOR AN ACT ENTITLED, An Act to appropriate money to the Department of Social
2 Services to fund assistance in the treatment of renal disease.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. There is hereby appropriated from the general fund the sum of four
5 hundred ten thousand dollars (\$410,000), or so much thereof as may be necessary, to
6 the Department of Social Services to provide for the administration and payment for
7 necessary services for persons suffering from chronic renal disease under the program
8 authorized by chapter 28-6A and administered by the Department of Social Services.

9 Section 2. The secretary of the Department of Social Services shall approve
10 vouchers and the state auditor shall draw warrants to pay expenditures authorized by
11 this Act.

12 Section 3. Any amounts appropriated in this Act not lawfully expended or obligated
13 by June 30, 2003, shall revert in accordance with the procedures prescribed in chapter
14 4-8.

NOTE: Shaded areas are standard language used in almost all special appropriations bills.

State of South Dakota

_____ SESSION
LEGISLATIVE ASSEMBLY, _____

General Fund Construction Bill

000I0000

HOUSE BILL I

Introduced by: Representative Johnson and Senator Adams

1 FOR AN ACT ENTITLED, An Act to appropriate money to repair certain roofs at
2 Valleyview State Hospital and School, Valleyview, South Dakota.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. There is hereby appropriated from the general fund the sum of one
5 hundred seventeen thousand four hundred ninety-two dollars (\$117,492), or so much
6 thereof as may be necessary, to the Department of Human Services to provide for the
7 repair of the roofs on the following structures: laundry, powerhouse, activities center,
8 and Sheldon Hall, at Valleyview State Hospital and School, Valleyview, South Dakota.

9 Section 2. The Department of Human Services may accept and expend for the
10 purposes of this Act, in addition to the amount authorized in section 1 of this Act, any
11 funds which it may obtain from federal sources, gifts, contributions, or any other
12 source, provided such acceptance and expenditure is approved in accordance with § 4-
13 88-10.

14 Section 3. The Bureau of Administration, pursuant to § 5-14-2, shall supervise the
15 design and construction of these projects. The state engineer and the secretary of human
16 services shall approve vouchers and the state auditor shall draw warrants authorized by
17 this Act.

State of South Dakota

_____ SESSION
LEGISLATIVE ASSEMBLY, _____

Concurrent Resolution

000J0000

SENATE CONCURRENT RESOLUTION J

Introduced by: _____

1 **A CONCURRENT RESOLUTION,** Requesting the Livestock Sanitary Board to study
2 the possibility of controlling or eradicating anaplasmosis.
3 **WHEREAS,** the livestock disease, anaplasmosis, has caused substantial losses to
4 ranchers in recent years; and
5 **WHEREAS,** little is known regarding the infective organism and the disease cycle;
6 and
7 **WHEREAS,** no suitable vaccine has yet been developed that does not have serious
8 side effects; and
9 **WHEREAS,** current experimentation indicates that a new cure is within reach in
10 the near future:
11 **NOW, THEREFORE, BE IT RESOLVED,** by the Senate of the Ninetieth
12 Legislature of the State of South Dakota, the House of Representatives concurring
13 therein, that the Livestock Sanitary Board be requested to institute a study to determine
14 the extent of anaplasmosis in South Dakota and the desirability of establishing state
15 programs for its control or eradication and make a report to the Ninety-first Legislature.

NOTE: Shaded areas are standard language used in Concurrent Resolutions.

State of South Dakota

_____ SESSION
LEGISLATIVE ASSEMBLY, _____

Joint Resolution

000K0000

SENATE JOINT RESOLUTION K

Introduced by: Senators Foreman and Watson

1 A JOINT RESOLUTION, Proposing and submitting to the electors at the next general election
2 an amendment to Article VIII of the Constitution of the State of South Dakota, relating to
3 school lands.

4 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF
5 SOUTH DAKOTA, THE SENATE CONCURRING THEREIN:

6 Section 1. That at the next general election held in the state, the following amendment to
7 Article VIII of the Constitution of the State of South Dakota, as set forth in section 2 of this
8 Joint Resolution, which is hereby agreed to, shall be submitted to the electors of the state for
9 approval.

10 Section 2. That Article VIII of the Constitution of the State of South Dakota be amended
11 by adopting a new section to read as follows:

12 ¶ 19. All gas, coal, oil, and mineral rights, and any other rights, as specified by law, to or in
13 public lands, are reserved for the state. Leases may be executed by the state for the exploration,
14 extraction, and sale of such materials in the manner and with such conditions as are provided
15 by law.

NOTE: In proposed constitutional amendments, unlike statutes, it is proper to assign section numbers to new material.

State of South Dakota

_____ SESSION
LEGISLATIVE ASSEMBLY, _____

Commemoration

000L0000

SENATE COMMEMORATION NO. L

Introduced by:

A LEGISLATIVE COMMEMORATION, Recognizing Mike Bauer for being selected as an Outstanding Young Farmer at the National Outstanding Young Farmers Award Congress.

WHEREAS, Mike Bauer of rural Brookings farms approximately twenty-five hundred acres consisting of soybeans, corn, and alfalfa, and feeds over two thousand calves and hogs; and

WHEREAS, Mr. Bauer was one of four national winners selected from among forty state winners competing at the National Outstanding Young Farmers Award Congress, in Des Moines, Iowa; and

WHEREAS, Mr. Bauer and his family exemplify the best aspects of rural America and will serve as outstanding representatives for the people of South Dakota and its agricultural community:

NOW, THEREFORE, BE IT RESOLVED, by the Senate of the Ninetieth Legislature of the State of South Dakota, the House of Representatives concurring therein, that Mike Bauer be congratulated for being selected as an Outstanding Young Farmer at the national level.

NOTE: Shaded areas are standard language used in Commemorations.

NOTE: Commemorations typically do not have more than three **WHEREAS** clauses. In addition, no Commemoration may be introduced during the last five legislative days of session. A legislative Commemoration expresses recognition of service or achievement of national or statewide importance or express sorrow over death or loss.